

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

BANNEKER HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's BANNEKER HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BANNEKER HIGH SCHOOL in the District was (4.9%) and (fraudulent\*) percentage points respectively.

11. If the District's BANNEKER HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (1) and (fraudulent\*) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's BANNEKER HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (4.9%) percentage points. For example, BANNEKER HIGH SCHOOL reports a 2010 amount of fraudulent\* percentage point gap between the percentage of girls enrolled (69.6%) compared to boys enrolled (30.4%) and the

percentage of athletes who are girls (fraudulent\*) compared to boys (fraudulent\*). If BANNEKER HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (1) number of girls would be able play sports. If BANNEKER HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (fraudulent\*) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its BANNEKER HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
BANNEKER HIGH SCHOOL	fraudulent*	4.9%	fraudulent*

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, BANNEKER HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At BANNEKER HIGH SCHOOL, the participation gap has increased or continued from 4.9% percentage points in 2006 to fraudulent\* percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's BANNEKER HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's BANNEKER HIGH SCHOOL, and there is no reason to believe that BANNEKER HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female BANNEKER HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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*conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.” Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.*

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BANNEKER HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate BANNEKER HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

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2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

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9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's BELL HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of BELL HIGH SCHOOL in the District was (13.1%) and (fraudulent\*) percentage points respectively.

11. If the District's BELL HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (5) and (fraudulent\*) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's BELL HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (13.1%) percentage points. For example, BELL HIGH SCHOOL reports a 2010 amount of fraudulent\* percentage point gap between the percentage of girls enrolled (51.0%) compared to boys enrolled (49.0%) and the percentage of

athletes who are girls (fraudulent\*) compared to boys (fraudulent\*). If BELL HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (5) number of girls would be able play sports. If BELL HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (fraudulent\*) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its BELL HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
BELL HIGH SCHOOL	fraudulent*	13.1%	fraudulent*

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, BELL HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At BELL HIGH SCHOOL, the participation gap has increased or continued from 13.1% percentage points in 2006 to fraudulent\* percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's BELL HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's BELL HIGH SCHOOL, and there is no reason to believe that BELL HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female BELL HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

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20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

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*conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.” Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.*

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

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26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BELL HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate BELL HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**

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**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS c/o  
FRIENDSHIP PCS  
120 Q Street Northeast, Suite 200  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the FRIENDSHIP PCS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
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**JURISDICTION**

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remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The FRIENDSHIP PCS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS in the District was (no data) and (20.3%) percentage points respectively.

11. If the District's FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS provided girls with opportunities substantially proportionate to enrollment, an additional (no data) and (52) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS reported CRDC data indicated athletes in 2006 have a participation gap of (no data) percentage points. For example, FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS reports a 2010

amount of 20.3% percentage point gap between the percentage of girls enrolled (53.7%) compared to boys enrolled (46.3%) and the percentage of athletes who are girls (33.3%) compared to boys (66.7%). If FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS provided girls with proportional athletic opportunities in 2006, an additional (no data) number of girls would be able play sports. If FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS had provided girls in 2009-10 with proportional athletic opportunities, an additional (52) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS	no data	no data	20.3%

\*

14. For these reasons, FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS, the participation gap has increased or continued from no data percentage points in 2006 to 20.3% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS, and there is no reason to believe that FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS students, the FRIENDSHIP PCS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

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<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The FRIENDSHIP PCS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate FRIENDSHIP - WOODSON (COLLEGIATE) CAMPUS in the FRIENDSHIP PCS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.
- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

ROOSEVELT HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's ROOSEVELT HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of ROOSEVELT HIGH SCHOOL in the District was (25.6%) and (18.6%) percentage points respectively.

11. If the District's ROOSEVELT HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (15) and (31) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's ROOSEVELT HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (25.6%) percentage points. For example, ROOSEVELT HIGH SCHOOL reports a 2010 amount of 18.6% percentage point gap between the percentage of girls enrolled (39.9%) compared to boys enrolled (60.1%) and the percentage

of athletes who are girls (21.2%) compared to boys (78.8%). If ROOSEVELT HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (15) number of girls would be able play sports. If ROOSEVELT HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (31) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its ROOSEVELT HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
ROOSEVELT HIGH SCHOOL	fraudulent*	25.6%	18.6%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, ROOSEVELT HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At ROOSEVELT HIGH SCHOOL, the participation gap has increased or continued from 25.6% percentage points in 2006 to 18.6% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's ROOSEVELT HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's ROOSEVELT HIGH SCHOOL, and there is no reason to believe that ROOSEVELT HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female ROOSEVELT HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

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*conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.” Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.*

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

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26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female ROOSEVELT HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate ROOSEVELT HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can

provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
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**U.S. DEPARTMENT OF EDUCATION**  
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**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

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**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

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12. More specifically, the District's BALLOU HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (25.6%) percentage points. For example, BALLOU HIGH SCHOOL reports a 2010 amount of 15.7% percentage point gap between the percentage of girls enrolled (53.2%) compared to boys enrolled (46.8%) and the percentage of athletes who

are girls (37.5%) compared to boys (62.5%). If BALLOU HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (17) number of girls would be able play sports. If BALLOU HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (25) number of girls would be able play sports.

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

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- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female BALLOU HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate BALLOU HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

SPINGARN HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.
6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's SPINGARN HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SPINGARN HIGH SCHOOL in the District was (26.5%) and (15.6%) percentage points respectively.

11. If the District's SPINGARN HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (23) and (22) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's SPINGARN HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (26.5%) percentage points. For example, SPINGARN HIGH SCHOOL reports a 2010 amount of 15.6% percentage point gap between the percentage of girls enrolled (47.7%) compared to boys enrolled (52.3%) and the percentage of

athletes who are girls (32.1%) compared to boys (67.9%). If SPINGARN HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (23) number of girls would be able play sports. If SPINGARN HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (22) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its SPINGARN HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
SPINGARN HIGH SCHOOL	fraudulent*	26.5%	15.6%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, SPINGARN HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At SPINGARN HIGH SCHOOL, the participation gap has increased or continued from 26.5% percentage points in 2006 to 15.6% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's SPINGARN HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's SPINGARN HIGH SCHOOL, and there is no reason to believe that SPINGARN HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female SPINGARN HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female SPINGARN HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate SPINGARN HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

CARDOZO HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's CARDOZO HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of CARDOZO HIGH SCHOOL in the District was (16.7%) and (14.8%) percentage points respectively.

11. If the District's CARDOZO HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (8) and (23) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's CARDOZO HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (16.7%) percentage points. For example, CARDOZO HIGH SCHOOL reports a 2010 amount of 14.8% percentage point gap between the percentage of girls enrolled (43.8%) compared to boys enrolled (56.2%) and the percentage of athletes who

are girls (29.0%) compared to boys (71.0%). If CARDOZO HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (8) number of girls would be able play sports. If CARDOZO HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (23) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its CARDOZO HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
CARDOZO HIGH SCHOOL	fraudulent*	16.7%	14.8%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, CARDOZO HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At CARDOZO HIGH SCHOOL, the participation gap has increased or continued from 16.7% percentage points in 2006 to 14.8% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's CARDOZO HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's CARDOZO HIGH SCHOOL, and there is no reason to believe that CARDOZO HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female CARDOZO HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female CARDOZO HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate CARDOZO HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

WILSON HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.
6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's WILSON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WILSON HIGH SCHOOL in the District was (13.1%) and (13.8%) percentage points respectively.

11. If the District's WILSON HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (31) and (46) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's WILSON HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (13.1%) percentage points. For example, WILSON HIGH SCHOOL reports a 2010 amount of 13.8% percentage point gap between the percentage of girls enrolled (50.2%) compared to boys enrolled (49.8%) and the percentage of athletes who

are girls (36.4%) compared to boys (63.6%). If WILSON HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (31) number of girls would be able play sports. If WILSON HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (46) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its WILSON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
WILSON HIGH SCHOOL	1.4%	13.1%	13.8%

\*

14. For these reasons, WILSON HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At WILSON HIGH SCHOOL, the participation gap has increased or continued from 13.1% percentage points in 2006 to 13.8% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's WILSON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's WILSON HIGH SCHOOL, and there is no reason to believe that WILSON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female WILSON HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WILSON HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate WILSON HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

MCKINLEY HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's MCKINLEY HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of MCKINLEY HIGH SCHOOL in the District was (12.0%) and (13.5%) percentage points respectively.

11. If the District's MCKINLEY HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (22) and (42) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's MCKINLEY HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (12.0%) percentage points. For example, MCKINLEY HIGH SCHOOL reports a 2010 amount of 13.5% percentage point gap between the percentage of girls enrolled (56.3%) compared to boys enrolled (43.7%) and the percentage

of athletes who are girls (42.9%) compared to boys (57.1%). If MCKINLEY HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (22) number of girls would be able play sports. If MCKINLEY HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (42) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its MCKINLEY HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
MCKINLEY HIGH SCHOOL	no data	12.0%	13.5%

\*

14. For these reasons, MCKINLEY HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At MCKINLEY HIGH SCHOOL, the participation gap has increased or continued from 12.0% percentage points in 2006 to 13.5% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's MCKINLEY HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

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17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's MCKINLEY HIGH SCHOOL, and there is no reason to believe that MCKINLEY HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female MCKINLEY HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

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*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

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*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

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26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female MCKINLEY HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate MCKINLEY HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
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**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

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**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

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10. The District's COOLIDGE HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of COOLIDGE HIGH SCHOOL in the District was (21.1%) and (8.5%) percentage points respectively.

11. If the District's COOLIDGE HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (33) and (19) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's COOLIDGE HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (21.1%) percentage points. For example, COOLIDGE HIGH SCHOOL reports a 2010 amount of 8.5% percentage point gap between the percentage of girls enrolled (42.6%) compared to boys enrolled (57.4%) and the percentage of

athletes who are girls (34.1%) compared to boys (65.9%). If COOLIDGE HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (33) number of girls would be able play sports. If COOLIDGE HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (19) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its COOLIDGE HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
COOLIDGE HIGH SCHOOL	fraudulent*	21.1%	8.5%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, COOLIDGE HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At COOLIDGE HIGH SCHOOL, the participation gap has increased or continued from 21.1% percentage points in 2006 to 8.5% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

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<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's COOLIDGE HIGH SCHOOL, and there is no reason to believe that COOLIDGE HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female COOLIDGE HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

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21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female COOLIDGE HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate COOLIDGE HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

WOODSON HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's WOODSON HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of WOODSON HIGH SCHOOL in the District was (26.0%) and (7.8%) percentage points respectively.

11. If the District's WOODSON HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (36) and (18) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's WOODSON HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (26.0%) percentage points. For example, WOODSON HIGH SCHOOL reports a 2010 amount of 7.8% percentage point gap between the percentage of girls enrolled (50.0%) compared to boys enrolled (50.0%) and the percentage of

athletes who are girls (42.2%) compared to boys (57.8%). If WOODSON HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (36) number of girls would be able play sports. If WOODSON HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (18) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its WOODSON HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
WOODSON HIGH SCHOOL	15.1%	26.0%	7.8%

\*

14. For these reasons, WOODSON HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At WOODSON HIGH SCHOOL, the participation gap has increased or continued from 26.0% percentage points in 2006 to 7.8% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's WOODSON HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's WOODSON HIGH SCHOOL, and there is no reason to believe that WOODSON HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female WOODSON HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

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- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female WOODSON HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate WOODSON HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
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**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

SCHOOL WITHOUT WALLS c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

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10. The District's SCHOOL WITHOUT WALLS does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of SCHOOL WITHOUT WALLS in the District was (23.6%) and (6.9%) percentage points respectively.

11. If the District's SCHOOL WITHOUT WALLS provided girls with opportunities substantially proportionate to enrollment, an additional (11) and (13) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's SCHOOL WITHOUT WALLS reported CRDC data indicated athletes in 2006 have a participation gap of (23.6%) percentage points. For example, SCHOOL WITHOUT WALLS reports a 2010 amount of 6.9% percentage point gap between the percentage of girls enrolled (67.4%) compared to boys enrolled (32.6%) and the percentage of

athletes who are girls (60.5%) compared to boys (39.5%). If SCHOOL WITHOUT WALLS provided girls with proportional athletic opportunities in 2006, an additional (11) number of girls would be able play sports. If SCHOOL WITHOUT WALLS had provided girls in 2009-10 with proportional athletic opportunities, an additional (13) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its SCHOOL WITHOUT WALLS since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
SCHOOL WITHOUT WALLS	-4.3%	23.6%	6.9%

\*

14. For these reasons, SCHOOL WITHOUT WALLS cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At SCHOOL WITHOUT WALLS, the participation gap has increased or continued from 23.6% percentage points in 2006 to 6.9% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

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**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

DUNBAR HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
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7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's DUNBAR HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of DUNBAR HIGH SCHOOL in the District was (11.6%) and (6.8%) percentage points respectively.

11. If the District's DUNBAR HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (22) and (17) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's DUNBAR HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (11.6%) percentage points. For example, DUNBAR HIGH SCHOOL reports a 2010 amount of 6.8% percentage point gap between the percentage of girls enrolled (49.7%) compared to boys enrolled (50.3%) and the percentage of athletes who are

girls (42.9%) compared to boys (57.1%). If DUNBAR HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (22) number of girls would be able play sports. If DUNBAR HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (17) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its DUNBAR HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
DUNBAR HIGH SCHOOL	fraudulent*	11.6%	6.8%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, DUNBAR HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At DUNBAR HIGH SCHOOL, the participation gap has increased or continued from 11.6% percentage points in 2006 to 6.8% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's DUNBAR HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's DUNBAR HIGH SCHOOL, and there is no reason to believe that DUNBAR HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female DUNBAR HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female DUNBAR HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate DUNBAR HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

ANACOSTIA HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's ANACOSTIA HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of ANACOSTIA HIGH SCHOOL in the District was (27.3%) and (0.3%) percentage points respectively.

11. If the District's ANACOSTIA HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (26) and (0) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's ANACOSTIA HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (27.3%) percentage points. For example, ANACOSTIA HIGH SCHOOL reports a 2010 amount of 0.3% percentage point gap between the percentage of girls enrolled (50.3%) compared to boys enrolled (49.7%) and the percentage

of athletes who are girls (50.0%) compared to boys (50.0%). If ANACOSTIA HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (26) number of girls would be able play sports. If ANACOSTIA HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (0) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its ANACOSTIA HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
ANACOSTIA HIGH SCHOOL	fraudulent*	27.3%	0.3%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, ANACOSTIA HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At ANACOSTIA HIGH SCHOOL, the participation gap has increased or continued from 27.3% percentage points in 2006 to 0.3% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's ANACOSTIA HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's ANACOSTIA HIGH SCHOOL, and there is no reason to believe that ANACOSTIA HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female ANACOSTIA HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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*conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test.” Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.*

OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female ANACOSTIA HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate ANACOSTIA HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can

provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.

**U.S. DEPARTMENT OF EDUCATION**  
**OFFICE FOR CIVIL RIGHTS**  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475

**ADMINISTRATIVE COMPLAINT**

**COMPLAINANT**

**May 9, 2012**

**RECIPIENT**

EASTERN HIGH SCHOOL c/o  
DISTRICT OF COLUMBIA PUB SCHLS  
1200 First Street, NE,  
Washington, DC 20002

**PRELIMINARY STATEMENT**

1. This Complaint is filed by pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated there under. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, including athletics.
2. As detailed in the Factual and Legal Allegations below, data submitted by the DISTRICT OF COLUMBIA PUB SCHLS (the “District”) to the U.S. Department of Education pursuant to the Department’s Civil Rights Data Collection (CRDC), indicate that the District is not providing equal opportunities for female high school students to play sports under Title IX’s three-part participation test.
3. In order to address these disparities, the complainant requests that the Washington DC Office for Civil Rights (“OCR”) investigate this high school in the District to determine whether they are providing girls with equal opportunities to play sports as required by Title IX and remedy any unlawful conduct.

**JURISDICTION**

4. The Washington DC U.S. Department of Education, Office for Civil Rights is responsible for ensuring compliance with Title IX and receiving information about, investigating, and

remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. The complainant has not filed this complaint with any other agency or institution.

6. Given the ongoing nature of the problems documented, this complaint is timely.

## **FACTUAL ALLEGATIONS**

7. The DISTRICT OF COLUMBIA PUB SCHLS receives federal financial assistance and is therefore prohibited from discriminating on the basis of sex by Title IX. The school district is a member of the DC State Board of Education, and under the authority of the Office of the State Superintendent of Education (OSSE), also recipients of federal financial assistance.

8. The Department of Education's Office for Civil Rights ("OCR") collects data on key education and civil rights issues in our nation's public schools through its Civil Rights Data Collection. The purpose of the CRDC is to obtain data to evaluate whether the nation's public school districts and elementary and secondary schools are fulfilling their obligations to provide equal educational opportunity. School districts provide a variety of information to the Department as part of the CRDC, including data on enrollment, access to educational programs and services, and academic proficiency results, disaggregated by factors including race, ethnicity, sex, and disability.

9. Interscholastic participation and enrollment data was submitted by the District high school to U.S. Department of Education (ED) for years between 2004 and 2010 included with this complaint. 2010 CRDC data is the most recent data available which indicates that the District has a history of not providing equal opportunities for female high school students to play sports under Title IX's three-part participation test (see Legal Allegations below).

10. The District's EASTERN HIGH SCHOOL does not provide opportunities for girls to play sports in numbers substantially proportionate to their enrollment (prong one). The 2006 and 2010 participation gap (the difference between the percentage of girls enrolled and the percentage of athletes who are girls) of EASTERN HIGH SCHOOL in the District was (22.4%) and (-6.3%) percentage points respectively.

11. If the District's EASTERN HIGH SCHOOL provided girls with opportunities substantially proportionate to enrollment, an additional (26) and (-6) girls respectively for those school years would have been able to play sports. There are further indications CRDC numbers being reported by the high school that inflated girl's participation numbers by claiming cheerleading and/or dance activities in there CRDC participation numbers and are claimed as athletics on the schools website.

12. More specifically, the District's EASTERN HIGH SCHOOL reported CRDC data indicated athletes in 2006 have a participation gap of (22.4%) percentage points. For example, EASTERN HIGH SCHOOL reports a 2010 amount of -6.3% percentage point gap between the percentage of girls enrolled (54.8%) compared to boys enrolled (45.2%) and the percentage of athletes who

are girls (61.1%) compared to boys (38.9%). If EASTERN HIGH SCHOOL provided girls with proportional athletic opportunities in 2006, an additional (26) number of girls would be able play sports. If EASTERN HIGH SCHOOL had provided girls in 2009-10 with proportional athletic opportunities, an additional (-6) number of girls would be able play sports.

13. The District's CRDC interscholastic data also show continuing, increasing or sustained substantial female participation gaps at its EASTERN HIGH SCHOOL since the 2004 CRDC, which is the opposite of a history and continuing practice of program expansion (prong two).

HIGH SCHOOL	2004 CRDC DISPARITY	2006 CRDC DISPARITY	2009-10 CRDC DISPARITY
EASTERN HIGH SCHOOL	fraudulent*	22.4%	-6.3%

\*for this school year the District fraudulently submitted it had no interscholastic athletics and zero participation. The District's school website shows it has interscholastic athletics.

14. For these reasons, EASTERN HIGH SCHOOL cannot establish a ten-year history and continuing practice of program expansion year-by-year that is demonstrably responsive to the developing interest and abilities of the underrepresented high school females.<sup>1</sup>

15. At EASTERN HIGH SCHOOL, the participation gap has increased or continued from 22.4% percentage points in 2006 to -6.3% percentage points in 2010 due to significant cuts in this District's female athletic programs and other districts within its competitive region without regard to the deleterious effect on the existing female athletic participation disparities in this school district.

16. Information available from the District of Columbia Interscholastic Athletic Association (DCIAA) shows that state-sanctioned sports including other regional interscholastic sports are not being offered to girls at the District's EASTERN HIGH SCHOOL indicate that the District is unlikely to be able to demonstrate that it is not fully and effectively accommodating girls' interests and abilities (prong three). CRDC athletic participation records support a conclusion that there is a reasonable expectation of competition in several girls' sports that are not currently offered by the District within its normal competitive regions.<sup>2</sup>

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<sup>1</sup> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interest and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletic participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women." U.S. Court of Appeals for the First Circuit in Cohen v. Brown University.

<sup>2</sup> As the judge concluded in Choike vs SRU, "67. Plaintiffs have the burden of demonstrating that SRU has not complied with the substantial proportionality prong. 68. If Plaintiffs are successful in this regard, then the burden shifts to SRU to demonstrate compliance under either the second or third prongs.69. After careful consideration, I conclude that Plaintiffs have proven that SRU has failed the substantial proportionality test." Choike v. Slippery Rock University, No.06-622; U.S.District Court, PA, July, 2006.

17. There are sports sanctioned by the DCIAA that are not offered to girls at the District's EASTERN HIGH SCHOOL, and there is no reason to believe that EASTERN HIGH SCHOOL girls in the District are any less interested in these sports than other girls in the state competitive regions.<sup>3</sup>

18. By not providing equal opportunities for its female EASTERN HIGH SCHOOL students, the DISTRICT OF COLUMBIA PUB SCHLS District is depriving many girls of the significant benefits associated with playing sports. Sports participation has dramatic positive effects on young women's college scholarship opportunities, personal health, academic success, employment prospects, and self-esteem.

## **LEGAL ALLEGATIONS**

19. Title IX provides in relevant part that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681(a).*

20. The Title IX regulations require the following with respect to athletics programs:

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient . . . 34 C.F.R. § 106.41(a).*

21. With regard to opportunities to play sports, the Title IX regulations require institutions that offer athletics programs to provide equal participation opportunities to members of both sexes, both in terms of the selection of sports and levels of competition available. 34 C.F.R. § 106.41(c)(1).

22. The 1979 Title IX Policy Interpretation provides further guidance on what it means to provide equal athletic participation opportunities to members of both sexes. United States Department of Health, Education, and Welfare, Office for Civil Rights, *Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71418 (December 11, 1979).

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OCR is therefore required to investigate, as it is the recipient's burden to provide an affirmative defense of Prong Two or Three of the Three Part Test. Further, OCR alone has the authority under Title IX enforcement to overcome FERPA restrictions in requesting relevant student interest information from the District recipient to which complainants have no such authority or burden to produce.

<sup>3</sup> *Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students or admitted students have the potential to sustain an intercollegiate [or interscholastic] team.* 1996 OCR Clarification.

23. Under the 1979 Policy Interpretation, which is applicable to both intercollegiate and interscholastic sports, compliance in the area of athletic participation is measured in any one of the following ways, referred to as the “three-part test”:

- (1) *Whether inter[scholastic] level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or*
- (2) *Where the members of one sex have been and are underrepresented among inter[scholastic] athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or*
- (3) *Where the members of one sex are underrepresented among inter[scholastic] athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.*

24. The 1996 and 2010 Policy Clarifications provide more specific information on how institutions can comply with Title IX’s three-part participation test. United States Department of Education, Office for Civil Rights, *Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test* (Jan. 16, 1996); United States Department of Education, Office for Civil Rights, *Intercollegiate Athletics Policy Clarification: The Three-Part Test—Part Three* (April 20, 2010).

25. The 1990 Investigator’s Manual, the guide for the OCR regional offices on conducting interscholastic athletics investigations, states that if even one school is found in violation of the regulation, then the remedy should reflect assurances of compliance from all schools in the district. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator’s Manual* (1990), at 8-10.

26. The DISTRICT OF COLUMBIA PUB SCHLS data, as outlined in the Factual Allegations above, demonstrate that the District is not providing equal opportunities for female EASTERN HIGH SCHOOL students to play sports under Title IX’s three-part participation test.

## **RELIEF REQUESTED**

27. The complainant requests that:

- a. The Washington DC OCR investigate EASTERN HIGH SCHOOL in the DISTRICT OF COLUMBIA PUB SCHLS District to determine whether they can provide an affirmative defense to these allegations and can show they are providing their female students with equal opportunities to play sports. 34 C.F.R. §§ 106.71, 100.7.

- b. The Washington DC OCR take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise by the District, as required by Title IX and its implementing regulations. 34 C.F.R § 106.3(a).
- c. If any violations are found, the Washington DC OCR secure assurances of compliance with Title IX from all schools in the District, as well as full remedies for the violations found. United States Department of Education, Office for Civil Rights, *Title IX Athletics Investigator's Manual* (1990), at 8-10 (setting forth the approach to athletics investigations for interscholastic athletics).
- d. The Washington DC OCR monitor and enforce any resulting agreements with the District and/or individual schools to ensure that compliance with Title IX is achieved.